

**UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Case No. 20-22898-CMB
	:	
RONALD G. LINABURG,	:	Chapter 11
	:	
Debtor.	:	The Honorable Carlota M. Böhm
	:	Chief Judge
RONALD G. LINABURG,	:	
	:	
Movant.	:	Related Document No. ECF ## 455, 456
	:	
v.	:	Hearing Date: December 13, 2021 at 2:30
	:	p.m.
DIANA MARIE DONGELL, D.M.D.,	:	
	:	
Respondent.	:	

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**OBJECTION TO DEBTOR’S MOTION TO APPROVE  
GUARANTY OBLIGATION (ECF # 455)**

Creditor and Respondent, Diana Marie Dongell, D.M.D. (“Respondent”), by her counsel, respectfully submits this Objection to Debtor / Movant Ronald G. Linaburg’s (“Debtor”) Motion to Approve Guaranty Obligation (ECF # 455).

In support of this Objection, Respondent states the following.

1. On November 23, 2021, Debtor filed his “Motion to Approve Guaranty Obligation” requesting that the Court approve of Debtor’s request to act as the personal guarantor on a COVID-19 Economic Injury Disaster Loan (“EIDL Loan”) that Associated Dental Specialists, P.C. (“ADS”), has been approved for as the borrower from the SBA. *See* Motion at ¶¶ 5-6.

2. Debtor avers that ADS is seeking the EIDL Loan “to support its continued recovery from the pandemic and its economic impact as it continues to serve the community and its patients.” *Id.* at ¶ 5.

3. Debtor states that the SBA is requiring that a personal guaranty be executed in order to secure the loan and that “Debtor is the only individual who can personally guaranty the EIDL loan.” *Id.*

4. Respondent, in her capacity as a creditor in this case as well as a current Minority Shareholder of ADS, opposes Debtor’s Motion for the following several reasons: (a) Debtor has failed to comply with the statutory requirements for such requests; (b) Debtor’s request seeks the imposition of a post-petition lien that would take priority over existing unsecured liens; and (c) there exists a reasonable alternative signatory who currently serves as a corporate officer of ADS and who could serve as a guarantor of the EIDL Loan on ADS’s behalf.

5. Debtor’s Motion should be denied because it fails to conform to the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A) which requires that “[a] motion for authority to obtain credit . . . shall be accompanied by a copy of the credit agreement and a proposed form of order.” Fed. R. Bankr. P. 4001(c)(1)(A).

6. Debtor failed to attach a copy of the credit agreement, the EIDL Loan, and any documentation supporting his claim that he is the only individual who is available to execute a personal guaranty for a loan to ADS from the SBA. *See* Motion at ¶ 5; *see also In re Lehigh Valley Prof’l Sports Clubs, Inc.*, 260 B.R. 745, 750-751 (E.D. Pa. Bankr. 2001) (explaining that a debtor must seek court approval **before** obtaining credit, especially if the lender seeks a senior lien on the bankruptcy estate) (emphasis added).

7. While Debtor does disclose in his motion certain of the proposed terms of the “proposed SBA EIDL Loan to ADS” which indicate that Debtor would be personally guaranteeing up to \$2,000,000, the actual loan documents have not been attached. *See* Motion at ¶ 7.

8. Thus, Debtor's Motion fails to conform to the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A).

9. This leads to Respondent's second reason for objecting to Debtor's Motion. By permitting Debtor to personally guarantee a loan in the amount of 2,000,000.00, that loan would assume a priority position over Respondent's existing, unsecured Proof of Claim No. 11.

10. The requested EIDL Loan would be a post-petition, secured credit. Debtor has not first sought to obtain unsecured credit or sought court approval through notice and hearing to determine whether the existing unsecured creditors to Debtor's bankruptcy estate would be afforded adequate protection of their interests. *See generally* 11 U.S.C. § 364 (requiring that a debtor first attempt to obtain unsecured credits as well as notice and hearing to determine adequate protections where debtor seeks to obtain secured credit); *see also In re Stoney Creek Techs., LLC*, 364 B.R. 882, 890-91 (E.D. Pa. Bankr. 2007) (finding adequate protection did not exist for post-petition financing, despite equity cushion, where there was little prospect of the loan assisting the debtor in an otherwise failing business long-term even though it might provide relief in the short-term).

11. Additionally, Debtor's Motion should be denied given the history leading to the filing of Debtor's Petition in the first instance. Debtor has stated that he sought bankruptcy protection at least in part based on Debtor's previous conduct acting as a personal guarantor of debts which lead to confessed judgments against Debtor. In fact, Respondent's claims pending against ADS in state court and those recounted in her Proof of Claim are specifically based on inspections of ADS's books and records and based on Debtor's fraud and gross mismanagement in his exclusive control over the operations of ADS. (*See* Resp. to Debtor's Objection to POC, ECF # 432, ¶ 6).

12. In light of Debtor's pattern of personally guaranteeing credits that he is purportedly unable to pay, the instant motion requesting approval to personally guarantee the EIDL Loan is problematic because Creditor's ability to recover from Debtor's bankruptcy estate may be hindered or eliminated without affording any protection to her existing rights. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. ex. rel. Cybergenics Copr. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) ("In Chapter 11 cases, where no trustee is appointed, § 1107(a) provides that the debtor in possession . . . enjoys the powers that would otherwise vest in the bankruptcy trustee. Along with those powers, of course, comes **the trustee's fiduciary duty to maximize the value of the bankruptcy estate.**")(emphasis added).

13. Lastly, as to Debtor's assertion that he is the only person available to personally guarantee the EIDL Loan, this is wholly unsupported. There are other corporate officers and managers of ADS who are not currently debtors in any bankruptcy proceeding who should be available to execute a personal guaranty. Indeed, John Hischar, the current corporate secretary and business manager of ADS may be available to execute a guaranty. Furthermore, Debtor has not provided any documentary support that he is the only person available who may sign a personal guaranty on behalf of ADS.

14. For these reasons, Respondent respectfully requests that the Court DENY Debtor's Motion to Approve Guaranty Obligation (ECF # 455).

WHEREFORE, Respondent and Creditor, Diana Marie Dongell, D.M.D., respectfully requests that this Honorable Court deny Debtor's Motion to Approve Guaranty Obligation (ECF # 455).

Respectfully submitted,

Dated: December 10, 2021

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Debtor.	:	Related to ECF## 455, 456
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	:	Hearing: December 13, 2021 at 2:30 p.m.
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RONALD G. LINABURG,	:	
	:	
Movant,	:	
v.	:	
	:	
DIANA M. DONGELL, D.M.D.	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

I, Ronald L. Hicks, Jr., Esquire, hereby certify under penalty of perjury that on this 10th day of December, 2021, I served or caused to be served a true and correct copy of the foregoing document upon all parties in interest via the NEF generated by Court's electronic CM/ECF notification system, as follows:

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Also, on this 10<sup>th</sup> day of December 2021, I served or caused to be served a true and correct copy of the foregoing document via First Class U.S. Mail, postage prepaid, upon the parties identified in the attached mailing matrix (listed below), as well as the additional parties listed below:

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Dated: December 10, 2021

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